

**COUNTY OF SAN DIEGO, CALIFORNIA**  
**BOARD OF SUPERVISORS POLICY**

**Subject**

Competitive Procurement

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Purpose

To establish a Board of Supervisors policy requiring competitive procurement of goods and services, with exemptions for certain goods, services and classes of procurement, and an approval process for case-by-case exceptions.

Background

It makes good business sense for the County of San Diego to promote the economical and efficient procurement of goods and services from contractors doing business with the County. One important means of accomplishing this goal is to adopt a formal policy of competitive procurement to govern all County procurements. Accordingly, this policy provides that County procurements shall be conducted through competition to the maximum possible extent. However, where the best interest of the County would not be served through competitive procurement, this policy provides categorical exemptions and also a process for requesting exceptions to this policy.

Policy

It is the policy of the Board of Supervisors that:

The County shall procure items or services on a competitive basis unless it is in the County's best interests not to use the competitive procurement process.

The competitive procurement requirements of this policy may be satisfied through conducting either (a) Formal Bidding, or (b) Competitive Negotiated Procurement, as defined in Section 1, "Definitions."

Guidelines for Exemptions and Exceptions:

1. Definitions:

A. "Formal Bidding": A competitive procurement process in which prospective offerors respond to a solicitation for bids. A Request for Bid (RFB) is usually the solicitation vehicle for this method of procurement. The bids must comply with the specifications, terms and conditions for the needed item(s) or service(s) stated in the solicitation. The process is used when the specifications can be sufficiently defined and detailed to assure the procurement of appropriate and acceptable item(s) or service(s). Contract award is made on the basis of price to the lowest bidder who is both responsive (complies with the stated specifications) and responsible

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(competent and otherwise qualified to perform under any resulting contract). The County Contracting Manual and its Supplements provide further definition and County procedures for this process.

B. “Competitive Negotiated Procurement”: A procurement process in which prospective offerors respond to a solicitation for pricing and other qualifications, and negotiation of contract terms occurs prior to contract award. The County may initiate competitive negotiated procurements by issuing a Request for Proposal (RFP), a Request for Grant Application (RFGA), or a letter invitation to pre-qualified sources. The offerors' responses must comply with the terms and conditions stated in the solicitation. This process is used when specifications cannot be sufficiently defined or detailed to assure the procurement of appropriate and acceptable item(s) and service(s), and price is the primary, but not the sole, source selection factor. After receipt of proposals and completion of a source selection process, negotiations may be held with one or more offerors and a contract may be awarded based on price and other factors determining the best value for the County. A source selection process is used for RFP and RFGA to select firms for negotiations. RFGA is only used where the intent is to make multiple awards. The County Contracting Manual and its Supplements provide further definition and County procedures for this process.

C. “Public Exigency”: An emergency situation when the health and safety of the public or persons in the custody or care of the County are at risk if immediate measures are not taken to resolve the problem situation and it is not possible or practical to convene a Special Meeting of the Board of Supervisors

D. “Sole Source”: A procurement process in which item(s) or service(s) are procured from, or are a product of either:

1. A single source of supply not selected through a competitive procurement process; or
2. A single manufacturer, even though the items or services may be procured through a competitive procurement process (i.e., limited competition among dealers and distributors).

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2. Categorical Exemptions from Competitive Procurement Policy:

The following goods, services and classes of procurements are categorically exempt from competitive procurement requirements:

A. Utility Services: The item or service to be procured is from a utility company where service connections are allowed only in geographically defined service territories or where the work involves a utility system and only the utility company itself is allowed to perform the work.

B. Educational Services: Procurement of educational services from a nonprofit institution.

C. Services Acquired from Other Governmental Agencies: Services that are acquired directly from another governmental agency, or under a contract awarded competitively by another governmental agency to a third party, when the price can be determined to be fair and reasonable.

D. Standard Commercial Off-the-Shelf Software Packages or Hardware Products ("COTS"): Procurement of software or hardware products that are ready-made, available for sale to the government and to the general public, and designed to be easily integrated into existing systems without the need for extensive customization. COTS include, but are not limited to, those items listed in the County's IT outsourcer's "Catalog", and those items approved by the Chief Technology Office.

E. Equipment Maintenance Services: Maintenance Services Agreements provided by the equipment manufacturer or dealers/distributors as a result of a Life Cycle Cost Purchase determination or which are not available from a satisfactory alternate source as determined by the Director of Purchasing and Contracting.

F. Software, Software Licenses and Operating System Maintenance Services: Where the County has procured software and operating systems for its use, procurement of the continuing maintenance and upgrades of the software and operating systems, and renewal of software licenses, from the developer or manufacturer.

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G. Disabled Veteran Business Enterprises (DVBE): Procurement of up to \$50,000 in goods and services from a DVBE located in the County of San Diego and certified as a DVBE by the State of California.

H. Architectural, Engineering, and Related Professional Services: Professional services procured in accordance with Board Policy F-40 unless otherwise specified, applicable laws of the State of California and the related County implementing procedures.

I. Medical or Surgical Equipment, Supplies, or Professional Services: Procurement of medical or surgical equipment or supplies or professional services for use by a County hospital if and funds for such use are appropriated. "Medical or surgical equipment or supplies" means only equipment or supplies commonly, necessarily, and directly used by or under the direction of a physician and surgeon in caring for or treating a patient in a County hospital.

J. Use of Informal Competitive Process to Purchase Goods and Services: Procurement of up to \$250,000 in goods and services where the procurements are made through the use of telephone and internet quotes, provided that the Director of Purchasing and Contracting determines that the price or cost to the County is fair and reasonable.

To confirm an exemption from this policy, procuring departments shall cite the applicable categorical exemption in their request for approval of the procurement transmitted to the appropriate contracting authority (i.e., the Board of Supervisors or the Director of Purchasing and Contracting).

**3. Exceptions to Competitive Procurement Policy:**

The competitive procurement requirements of this policy may not apply if, under the particular circumstances of the procurement, an exception is warranted. The following examples are illustrative of circumstances that may be considered in authorizing case-by-case exceptions to this policy.

A. Sole Source: Only one person, firm or manufacturer exists that can provide the needed item or services, and no equivalent person, firm or manufacturer is available that would meet the County's minimum needs.

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B. Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of the basic raw material(s) or similar circumstances, and there is no equivalent item or service.

C. Absolute Compatibility:

1. The procurement is for replacement parts or components for equipment, and no information or data is available to ensure that the parts or components obtained from another supplier will perform the same function in the equipment as the part or component to be replaced;

2. The procurement is for replacement parts or components for equipment, and the replacement parts or components would compromise the safety or reliability of the product, or would void or invalidate a manufacturer's warranty or guarantee; or

3. The procurement is for upgrades, enhancements or additions to hardware or for enhancements or additions to software, and no information and data is available to ensure that equipment or software from different manufacturers or developers will be as compatible as equipment or software from the original manufacturer(s) or developer(s).

4. Threshold Amounts for Approving Exceptions to Competitive Procurement:

Procurements with an estimated annual value may be approved as follows:

- A. Contracts up to \$50,000 – Director of Purchasing and Contracting.
- B. Contracts between \$50,000 - \$100,000 – Chief Administrative Officer.
- C. Contracts over \$100,000 – Board of Supervisors.
- D. In cases of Public Exigency as defined under “Definitions” below, the Chief Administrative Officer may approve Sole Source Procurements above the \$100,000 threshold without Board of Supervisors' approval.

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5. Letters Requesting an Exception to this Policy:

Whether requesting approval by the Director of Purchasing and Contracting, the Chief Administrative Officer, or the Board of Supervisors, letters/e-mails requesting an exception to this policy shall conform to the following format and include the following information:

- A. Introductory paragraph on the procurement.
- B. Items or services and the term period.
- C. Benefits to the County of San Diego.
- D. Why the procurement qualifies for an exception .
- E. Determination of Fair and Reasonable Price.

6. Processing of Contracts Resulting from Any Noncompetitive Procurement:

Contracts for noncompetitive procurement, approved in accordance with this policy, shall be processed as follows:

- A. Noncompetitive procurements approved and processed by the Director of Purchasing and Contracting: (i) All exempt procurements, as described in Section 2, "Categorical Exemptions," above, and (ii) all procurement exceptions in annual amounts of up to \$100,000, as described in Section 3, "Exceptions," above.
- B. All procurements described in Section 2, "Exceptions," above in annual amounts over \$100,000 shall be forwarded, with a recommendation, to the Board of Supervisors for approval; and
- C. Notwithstanding the foregoing, the Chief Administrative Officer may approve any contract as an exception to competitive procurement in accordance with the Public Exigency provision in Section 4 D above.

Where the applicable authority denies a request for a noncompetitive procurement, the procurement shall be conducted through the use of the appropriate Formal Bidding or Competitive Negotiated Procurement process.

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7. Advertising Noncompetitive Procurements:

For Board-approved, noncompetitive procurements, the procuring department shall advertise the proposed procurement in an appropriate business newspaper, or post the proposed procurement as provided for by the Department of Purchasing and Contracting. For noncompetitive procurements less than \$100,000, the Director of Purchasing and Contracting shall have discretion to advertise these proposed procurements either in an appropriate business newspaper, or post the proposed procurement on the Internet.

Sunset Date

This policy will be reviewed for continuance by 12-31-2013.

Board Action

02-24-81 (134)

02-06-90 (43)

05-15-96 (11)

01-28-03 (16)

2-27-2007 (9)

CAO Reference

1. Department of Purchasing and Contracting
2. County Counsel